Re Soo Chin En (F)

HIGH COURT (KUALA LUMPUR) — PETITION NO S-32–220 OF 2003
SU GEOK YIAM J
29 SEPTEMBER 2015

Probate and Administration — Administration — Administration action — Applicant named sole executrix and trustee of deceased's estate — Petition for grant of probate to administer deceased's estate — Application to transfer equal shares of property as expressed in will — High Court granted leave to applicant in capacity as administrator and not as executrix — Applicant applied to land office in capacity as executrix of deceased's estate to transfer property — Land office rejected application — Applicant required to amend 'list of assets' attached to grant of probate — Whether application to amend 'list of assets' in grant of probate ought to be allowed

The deceased in this case passed away, leaving behind his wife ('the applicant') and their daughter. The deceased left a last will and property situated within the jurisdiction of the High Court. The property was a flat valued at RM80,000 which was to be erected ('the flat'). In his last will, the deceased named the applicant as the sole executrix and trustee of his estate in the event of his demise. The applicant petitioned for a grant of probate pursuant to O 71 r 7(1) of the Rules of the High Court 1980 ('the RHC') and the Probate and Administration Act 1959 ('the Act') in order to enable her to administer the deceased's estate. On 14 July 2003, the High Court allowed the applicant's petition and ordered the grant of probate to the applicant. On 21 August 2003, the grant of probate was subsequently issued to the applicant in order to enable her to carry out the administration of the deceased's estate that comprised only the flat. The land office issued the strata title for the flat to the developer. The applicant applied to the High Court in her capacity as the executrix of the deceased's estate for leave to transfer the flat to her daughter and herself in equal shares as per the wishes of the deceased as expressed clearly in his last will. The High Court granted leave to the applicant, in her capacity as the administrator of the deceased's estate (instead of in her capacity as the executrix of the deceased's estate) to transfer the flat to herself and to her daughter in equal shares. The developer transferred the flat to the applicant in her capacity as the executrix of the deceased's estate. The applicant applied to the land office in her capacity as the executrix of the deceased's estate to transfer the flat to herself and her daughter in equal shares in accordance with the wishes of the deceased as set out in the last will of the deceased. The land office rejected her application on the ground that it was necessary to amend the 'list of assets' that was attached to the grant of probate. Hence, applicant filed the present application to satisfy

A the requirement of the land office. The applicant sought to amend the 'list of assets' in the grant of probate dated 14 July 2003 that was issued on 21 August 2003 to the applicant in her capacity as the executrix of the estate of her late husband.

B **Held,** allowing the application in part:

(1) The description of the applicant as the 'administrator' of the deceased's estate in the order of court dated 21 August 2011 instead of as the 'executrix' of the deceased's estate was clearly a clerical error which fell C squarely within the ambit and scope of O 20 r 11 of the Rules of Court 2012 ('the ROC'). Based on the last will of the deceased and the grant of probate dated 14 July 2003, the applicant was clearly the executrix of the deceased's estate and not the administrator of the deceased's estate and it was the clear intention of the judge to grant leave to the applicant in her D capacity as the executrix of the deceased's estate to transfer the flat to her and to her daughter in equal shares in accordance with the deceased's will (see para 19).

(2) The court has the power under the slip rule in O 20 r 11 of the ROC to E grant the amendment to the regular and perfected order of court dated 21 August 2011 in the terms sought for by the applicant as it was necessary to correct an accidental error on the part of the court in expressing the intention of the court at the time it was made by the court. It was clear that on 14 July 2003, when the grant of probate was granted F to the applicant by the High Court, the strata title was not yet in existence as it had not been issued by the land office yet (see paras 20 & 24).

(3) Order 20 r 11 of the ROC could not be resorted to in order to confer power or discretion on the court to amend the grant of probate dated G 14 July 2003 to insert the description of the strata title that was only issued by the land office four years and seven months later, because there was no accidental error on the part of the court or on the part of the applicant or on the part of the applicant's solicitors that would necessitate or require this court to correct the accidental error by amending the grant H of probate dated 14 July 2003 to insert the description of the strata title for the flat (see para 25).

(4) The court had no power or discretion to grant her the application for the second amendment sought by her. Consequently, the court advised the I applicant as the executrix of the deceased's estate, to re-apply to the land office for the transfer of the flat, that was left behind by the testator, to her and to her daughter, being the lawful beneficiaries of the deceased's estate in accordance with the deceased's will, in equal shares, without the necessity to obtain an order from the court to amend the 'list of assets' in

the grant of probate dated 14 July 2003 in order to insert the description of the strata title that was only issued on 26 February 2008 by the land office (see paras 29–30).

(5) The court would write the grounds of judgment and the applicant was advised to obtain a copy of the court's grounds of judgment from the court and to attach them to her fresh application to the land office in order for the land office to understand the reasons why the court had dismissed her application for the second amendment sought by her and consequently, the land office will agree to register the transfer sought by her without the necessity for her to obtain an order of the court to amend the 'list of assets' in the grant of probate to insert the description of the strata title that was issued on 26 February 2008 by the land office for the flat (see para 31).

[Bahasa Malaysia summary

Si mati dalam kes ini meninggal dunia, meninggalkan seorang isteri ('pemohon') dan anak perempuan mereka. Si mati meninggalkan wasiat dan hartanah yang terletak dalam bidang kuasa Mahkamah Tinggi. Hartanah tersebut merupakan rumah pangsa bernilai RM80,000 yang bakal didirikan. Dalam wasiat terakhirnya, si mati menamakan pemohon sebagai wasi tunggal dan pemegang amanah harta pusakanya sekiranya dia meninggal dunia. Pemohon memohon petisyen bagi kebenaran probet di bawah A 71 k 7(1) Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT') dan Akta Probet dan Pentadbiran 1959 ('Akta') untuk membolehkannya mentadbir harta pusaka si mati. Pada 14 Julai 2003, Mahkamah Tinggi membenarkan petisyen pemohon dan membenarkan permohonan probet kepada pemohon. Pada 21 Ogos 2003, kebenaran probet seterusnya diberikan kepada pemohon untuk membolehkannya menjalankan pentadbiran atas harta pusaka si mati yang hanya terdiri daripada rumah pangsa tersebut. Pejabat tanah mengeluarkan hakmilik strata rumah pangsa kepada pemaju. Pemohon memohon kepada Mahkamah Tinggi dalam kapasitinya sebagai wasi harta pusaka si mati bagi kebenaran memindah milik rumah pangsa kepada anak perempuan mereka dan dirinya secara sama rata, seperti yang dihajatkan oleh si mati, dinyatakan dalam wasiat terakhirnya. Mahkamah Tinggi membenarkan permohonan perayu, dalam kapasitinya sebagai pentadbir harta pusaka si mati (bukan dalam kapasitinya sebagai wasi harta pusaka si mati) untuk memindahkan rumah pangsa tersebut kepada dirinya dan anak perempuannya secara sama rata. Pemaju memindah milik rumah pangsa tersebut kepada pemohon dalam kapasitinya sebagai wasi harta pusaka si mati. Pemohon memohon kepada pejabat tanah dalam kapasitinya sebaga wasi harta pusaka si mati untuk memindahkan rumah pangsa tersebut kepada dirinya dan anak perempuannya secara sama rata, selaras dengan hajat si mati seperti yang dinyatakan dalam wasiat terakhir si mati. Pejabat tanah menolak permohonannya atas alasan bahawa adalah perlu untuk meminda senarai aset yang dilampirkan dengan

permohonan probet. Oleh itu, pemohon memfailkan permohonan ini untuk memenuhi keperluan pejabat tanah. Pemohon memohon untuk meminda senarai aset dalam permohonan probet bertarikh 14 Julai 2003 yang dikeluarkan pada 21 Ogos 2003 kepada pemohon dalam kapasitinya sebagai wasi harta pusaka mendiang suaminya.

Diputuskan, membenarkan sebahagian permohonan:

(1) Gambaran pemohon sebagai 'pentadbir' harta pusaka si mati dalam perintah bertarikh 21 Ogos 2011, dan bukan sebagai 'wasi' harta pusaka si mati jelas merupakan satu silap sunting yang terjumlah penuh dalam ruang lingkup dan skop A 20 k 11 Kaedah-Kaedah Mahkamah 2012 ('KKM'). Berdasarkan wasiat terakhir si mati dan permohonan probet bertarikh 14 Julai 2003, jelas bahawa pemohon wasi harta pusaka si mati dan bukan pentadbir harta pusaka si mati dan niat hakim jelas dalam memberi kebenaran kepada pemohon dalam kapasitinya sebagai wasi harta pusaka si mati untuk memindahkan rumah pangsa tersebut kepada dirinya dan anak perempuannya secara sama rata berdasarkan wasiat si mati (lihat perenggan 19).

(2) Mahkamah mempunyai kuasa di bawah kaedah khilaf dalam A 20 k 11 KKM untuk membenarkan pindaan terhadap perintah yang teratur dan sempurna bertarikh 21 Ogos 2011 dalam terma yang dipohon oleh pemohon kerana perlu untuk membetulkan khilaf yang tidak disengajakan oleh mahkamah dalam menzahirkan niat mahkamah semasa ia dibuat di mahkamah. Jelas bahawa pada 14 Julai 2003, apabila kebenaran probet diberikan kepada pemohon oleh Mahkamah Tinggi, hakmilik strata belum wujud kerana ia belum dikeluarkan oleh pejabat tanah lagi (lihat perenggan 20–24).

(3) Aturan 20 k 11 KKM tidak boleh dirujuk untuk memberi kuasa atau bidang kuasa kepada mahkamah untuk meminda kebenaran probet bertarikh 14 Julai 2003 untuk memasukkan gambaran hakmilik strata yang dikeluarkan oleh pejabat tanah hanya empat tahun dan tujuh bulan kemudian kerana tiada khilaf yang tidak disengajakan oleh mahkamah atau pemohon atau peguamcara pemohon yang memerlukan mahkamah membetulkan khilaf yang tidak disengajakan itu dengan meminda kebenaran probet bertarikh 14 Julai 2003 untuk memasukkan gambaran hakmilik strata rumah pangsa itu (lihat perenggan 25).

(4) Mahkamah tidak mempunyai kuasa atau bidang kuasa untuk membenarkan permohonan bagi pindaan kedua yang dipohon olehnya. Oleh itu, mahkamah menasihatkan pemohon sebagai wasi harta pusaka si mati untuk memohon semula kepada pejabat tanah bagi pindah milik rumah pangsa yang ditinggalkan oleh pembuat wasiat kepadanya dan anaknya, sebagai benefisiari sah harta pusaka si mati selaras dengan wasiat si mati, secara pembahagian sama rata, tanpa perlu mendapatkan

perintah mahkamah untuk meminda senarai aset dalam kebenaran probet bertarikh 14 Julai 2003 untuk memasukkan gambaran hakmilik strata yang dikeluarkan pada 26 Februari 2008 oleh pejabat tanah (lihat perenggan 29–30).

(5) Mahkamah akan menulis alasan penghakiman dan pemohon dinasihatkan mendapatkan alasan penghakiman mahkamah daripada mahkamah dan melampirkannya pada permohonannya yang baharu kepada pejabat tanah agar pejabat tanah faham mengapa mahkamah menolak permohonan pindaan kedua yang dipohon olehnya dan seterusnya, pejabat tanah akan bersetuju mendaftarkan pindah milik yang dipohon olehnya tanpa perlu untuk mendapatkan perintah mahkamah untuk meminda senarai aset dalam kebenaran probet bertarikh untuk memasukkan gambaran hakmilik strata yang dikeluarkan pada 26 Februari 2008 oleh pejabat tanah bagi rumah pangsa tersebut (lihat perenggan 31).]

Notes

For cases on administration action, see 10(2) *Mallal's Digest* (5th Ed, 2015) paras 1819–1820.

Cases referred to

Abdul Rahim @ Packeer Mohamed bin M Esmailsha Amanah Raya Berhad v Soon Seng Company Sdn Bhd (Civil Suit No S2–22–162–87) (unreported), HC (refd)

Hock Hua Bank Bhd v Sahari bin Murid [1981] 1 MLJ 143, FC (refd)

Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong [2015] 5 MLJ 830; [2015] 6 CLJ 740, CA (refd)

Poh Yang Hong v Ng Lai Yin & Ors [2013] 8 CLJ 964, HC (refd)

Sang Lee Co Sdn Bhd & Ors v Munusamy a/l Karuppiah (sole proprietor of MNN Consultancy Services, a firm) [2010] 5 MLJ 285, FC (refd)

Legislation referred to

National Land Code s 298
Probate and Administration Act 1959
Rules of Court 2012 O 20 r 11
Rules of the High Court 1980 O 71 r 7(1)
Strata Title Act 1985

LM Chin (LM Chin & Co) for the applicant.

Su Geok Yiam J:

ENCLOSURE (13)

[1] On 9 July 2015, the applicant filed this application, encl (13), pursuant to O 20 r 11 of the Rules of Court 2012 ('the RC 2012') for leave to amend the 'list of assets' in the grant of probate dated 14 July 2003 that was issued on 21 August 2003 to the applicant in her capacity as the executrix of the estate of her late husband, namely, Chiang Lan Chai @ Cheong Yat Luen (NRIC No 410413–10–5321) who passed away on 7 November 2001 ('the deceased').

[2] The amendment sought is for the insertion of the description of the strata title ie 'HS (D) PN (WP) 27007, M1/3/35, Mukim Petaling, Wilayah Persekutuan', that was issued on 26 February 2008 by the land office of the Federal Territory of Kuala Lumpur ('the land office'), under the Strata Title Act 1985, to a developer, namely, Connaught Housing Development ('the developer'), for a real property in the 'list of assets' ('the real property').

[3] Prior to his demise, the deceased had purchased the real property from the developer vide a sale and purchase agreement dated 7 September 1985 entered into between the deceased and the developer.

[4] Subsequently, on 15 April 2013, the developer transferred the real property to the applicant in her capacity as the executrix of the estate of the deceased.

[5] Enclosure (13) is supported by the applicant's affidavit, encl (14), affirmed by the applicant on 2 July 2015.

BACKGROUND FACTS

[6] The background facts leading to the application are as follows:

(a) on 7 November 2001, at 9.30am, the deceased passed away at the General Hospital Kuala Lumpur, leaving behind the applicant, who was aged 49 years old, at the material time, and their daughter who was aged ten years old, at the material time, by the name of Cheong Wai Mun (birth certificate No J-762585 and later NRIC No 930902–14–5526);

(b) the deceased also left a last will dated 2 November 2001 and property situated within the jurisdiction of the Kuala Lumpur High Court;

(c) the property is a flat that was valued at RM80,000 at the material time;

(d) the address of the flat is No 5–2–7, Jalan 2/124, Taman Connaught, 56000 Cheras, Kuala Lumpur ('the flat');

(e) the flat was to be erected on land held under 'hak milik HS (D) 27714, Mukim Petaling, Wilayah Persekutuan';

(f) in his last will, the deceased had named the applicant as the sole executrix and trustee of his estate in the event of his demise;

(g) the will has two recitals and three paragraphs;

(h) the two recitals state as follows:

> *THIS IS THE LAST WILL AND TESTAMENT of CHIANG LAN CHAI @ CHEONG YAT LUEN (NRIC NO: 410413-10-5321) (OLD NRIC NO: 1157649)* of No: 119, Jalan Burung Garuda, Taman Bukit Maluri, Kepong, 52100 Kuala Lumpur made this *2nd* day of *November*, 2001.
>
> *I, CHIANG LAN CHAI @ CHEONG YAT LUEN (NRIC NO: 410413–10–5321) (OLD NRIC NO: 1157649)* hereby revoke all my former *WILLS* and *TESTAMENTARY DISPOSITION* made by me and declare this to be my *LAST WILL* and *TESTAMENT*. (Emphasis added.)

(i) Paragraphs 1, 2 and 3 of the deceased's last will state as follows:

> 1 I hereby appoint, *SOO CHIN EN (NRIC NO: 530104–10–5156) (OLD NRIC NO: 8114522)* of Unit No: 7, 2nd Floor, Block E (Phase 5) Taman Connaught, Cheras 56000 Kuala Lumpur to be my executrix and trustee of this my *LAST WILL*.
>
> 2 I *DEVISE* and *BEQUEATH* my whole undivided share in property known as Unit No: 7, 2nd Floor E (Phase 5) Taman Connaught, Cheras, 56000 Kuala Lumpur purchased vide Sale and Purchase Agreement dated *7th* day of *September*, 1985 from the Developer, *Connaught Housing Development Sdn. Bhd.* (Company Registration No: 16306–V) to *SOO CHIN EN (NRIC NO: 530104-10-5156) (OLD NRIC NO: 8114522)* and *CHEONG WAI MUN (BIRTH CERTIFICATE NO: J–762585)* all in equal shares.
>
> 3 AND I *DIRECT* that my executrix and trustee shall pay out of my estate my just debt, funeral and testamentary expenses and any other duty (if any). (Emphasis added.)

(j) on 14 April 2003, the applicant petitioned for a grant of probate pursuant to O 71 r 7(1) of the Rules of the High Court 1980 and the Probate and Administration Act 1959 in order to enable her to administer the deceased's estate ie to make payment of the deceased's just debts, funeral and testamentary expenses and any other duty (if any) and for the distribution of the deceased's estate in accordance with the deceased's will;

(k) on the same date ie 14 April 2003, the applicant appointed and authorised a firm of solicitors, namely, Messrs Peter Yip & Yong, to act on her behalf in order to obtain the grant of probate;

(l) on 14 July 2003, the Kuala Lumpur High Court allowed the applicant's petition and ordered the grant of probate to the applicant;

(m) on 21 August 2003, the grant of probate was issued to the applicant in order to enable her to carry out the administration of the deceased's estate that comprised only the flat;

(n) on 26 February 2008, the land office issued the strata title for the flat to the developer;

(o) on 9 August 2011, the applicant applied through her new solicitors, namely, LM Chin & Co, to the Kuala Lumpur High Court vide an ex parte originating summons No 24NCVC-2031 of 2011 in her capacity as the executrix of the deceased's estate for leave to transfer the flat to her daughter and herself in equal shares as per the wishes of the deceased as expressed clearly in his last will;

(p) it was supported by her affidavit affirmed by her on 8 August 2011;

(q) in para 2 of her affidavit-in-support, the applicant deposed that she was appointed the executrix of the deceased's estate pursuant to the deceased's last will, that on 14 July 2003 the grant of probate was granted to her by the Kuala Lumpur High Court and that the grant of probate was issued to her by the Kuala Lumpur High Court on 21 August 2003;

(r) paragraph 2 of her affidavit-in-support reads as follows:

> 2 Saya dilantik sebagai wasi terhadap ested CHIANG LAN CHAI @ CHEONG YAT LUEN (simati) menurut Geran Probet yang dikeluarkan oleh Mahkamah Tinggi Malaya Kuala Lumpur bertarikh 14.7.2003 pada 21.8.2003 (dirujuk selepas ini sebagai 'Geran Probet'). Salinan Geran Probet dan Wasiat Chiang Lan Chai @ Cheong Yat Luen (simati) dilampir sebagai ekshibit dan ditanda sebagai 'B'.

(s) on 25 August 2011, Harminder Singh Dhaliwal JC of the Kuala Lumpur High Court, granted leave to the applicant, in her capacity as the administrator of the deceased's estate (instead of in her capacity as the executrix of the deceased's estate) to transfer the flat to herself and to her daughter in equal shares;

(t) on 15 April 2013, the developer transferred the flat to the applicant in her capacity as the executrix of the deceased's estate;

(u) on 8 December 2014, the applicant applied to the land office in her capacity as the executrix of the deceased's estate to transfer the flat to herself and her daughter in equal shares in accordance with the wishes of the deceased as set out in the last will of the deceased;

(v) however, on 23 February 2015, the land office rejected her application on the ground that it was necessary to amend the 'list of assets' that was

attached to the grant of probate that was granted to her by the Kuala Lumpur High Court on 14 July 2003 to insert the description of the strata title for the flat in the 'list of assets'; and

(w) hence, on 9 July 2015, the applicant filed this application in encl (13) in order to satisfy the requirement of the land office.

GROUNDS FOR ENCLOSURE (13)

[7] The applicant relied on the following ground in Malay as stated in the second last paragraph and the last paragraph of her application in encl (13):

> Pindaan-pindaan diperlu supaya memenuhi keperluan yang ditetapkan oleh Pejabat Tanah Wilayah Persekutuan Kuala Lumpur terhadap permohonan untuk pendaftaran pindahmilik Hartanah tersebut.
>
> Alasan lain dinyatakan dengan terperinci dalam Afidavit Pemohon bertarikh 9 Jul 2015.

[8] In para 3 of her affidavit-in-support, enclosure (14), of her application, enclosure (13), the applicant deposed as follows in Malay:

> Saya diberitahu melalui surat Pejabat Tanah dan Galian Wilayah Persekutuan bertarikh 23.02.2015 kepada peguam saya Tetuan LM Chin & Co bahawa permohonan pindahmilik Hartanah tersebut ditolak atas sebab berikut:
>
> > (i) Perlu melakukan pindaan kepada no hakmilik Strata pada Senarai Aset Liabiliti dalam Grant Probate;
> >
> > (ii) ... sempurna.
> >
> > Salinan surat tersebut dilampirkan bersama dan diserahkan sebagai Ekshibit bertanda 'SCE-3'.

[9] The applicant then prayed that the description of the flat in the 'list of assets' be amended to read as follows as per the proposed amendment sought:

Contoh *SENARAI ASET* Terpinda

(1) Hartanah dan sebuah rumah yang beralamat
No 5–2–7, Jalan 2/124, Taman Connaught
5600 (sic) Cheras, Kuala Lumpur *yang didaftar*
sebagai hakmilik HS (D) PN (WP) 27007/M1/3/35,
Mukim Petaling Wilayah Persekutuan melalui
Perjanjian Jual Beli bertarikh 7/12/1985 (sic)
dengan Connaught Housing Development
Sdn bhd (Pemaju)
RM 80,000

SENARAI LIABILITI

Perbelanjaan pengurusan mayat	RM 10,000
JUMLAH KESELURUHAN (ASET – LIABILITI)	RM 70,000

(Emphasis added.)

THE APPLICANT'S SUBMISSIONS

[10] Ms LM Chin submitted as follows on behalf of the applicant:

(a) the applicant can only transfer the flat to herself and her daughter in equal shares in accordance with the deceased's will if two amendments are made to the two orders of court ie the order of court dated 23 August 2011 and the grant of probate by the court dated 14 July 2003;

(b) the first amendment is to substitute the word 'executrix' for the word 'administrator' in the Kuala Lumpur High Court Order dated 25 August 2011;

(c) this amendment is necessary because the clerical error in the Kuala Lumpur High Court order dated 25 August 2011 may cause the land office to reject her application for the transfer of the flat to herself and her daughter in equal shares on the ground that she is the executrix of the deceased's estate and not the 'administrator' of the deceased's estate;

(d) the second amendment is to insert in the grant of probate dated 14 July 2003 the description of the strata title for the flat in the 'list of assets' that was attached to the deceased's will that was attached to the grant of probate;

(e) this amendment is necessary because the applicant's application to the land office ie Pejabat Tanah dan Galian, Wilayah Persekutuan Kuala Lumpur, Bangunan Rumah Persekutuan, Jalan Sultan Hishamuddin, 50678 Wilayah Persekutuan, Kuala Lumpur, for the transfer of the flat to her and her daughter in equal shares under s 298 of the National Land Code has been rejected by the land office on the ground that it is necessary to amend the 'list of assets' in the grant of probate to insert the description of the strata title in it;

(f) the letter from the land office with the reference NO DG NORNI BT D RAMLIE and dated 23 February 2015 that contains the reasons as set out above is self-explanatory and is reproduced below as follows:

PEJABAT TANAH DAN GALIAN WP Kuala Lumpur

Bangunan Rumah Persekutuan

Jln Sultan Hishamuddin

50678 Wilayah Persekutuan KL

Telefon: 26103300

Fax: 26103491

Ruj Tuan:

Ruj Kami: DG NORNI BT D RAMLIE

Tarikh: 23 February 2015

LM CHIN & CO

66m, Jalan Cerdas Taman Connaught

6th Mile, Cheras Kuala Lumpur

56000 Wilayah Persekutuan KL

Tuan/Puan,

Penolakan Perserahan Di Bawah Seksyen 298

Kanun Tanah Negara

Saya diarah merujuk kepada perkara di atas dan dimaklumkan bahawa dokumen-dokumen yang tuan serahkan pada 08/12/2004 di dalam perserahan No: 47586/2014 Urusan:

Pindahmilik Tanah

ke atas hakmilik

Mukim Petaling PN 27007/M1/3/35

Telahpun ditolak atas sebab-sebab seperti berikut:

i) *PERLU BUAT PINDAAN KEPADA NOMBOR HAKMILIK STRATA PADA SENARAI ASSET LIABILITI DALAM GRANT PROBATE.*

ii) GARISAN MENDATAR, GARISAN PENJURU HENDAKLAH DITANDATANGANI RINGKAS DENGAN SEMPURNA.

2 Tuan/puan atau wakil tuan/puan bolehlah datang mengambil dokumen-dokumen tersebut di pejabat ini dengan membawa resit asal pada bila-bila masa waktu pejabat.

3 Tuan/puan dinasihatkan untuk menyemak kembali dokumen-dokumen yang telah ditolak dan pejabat ini tidak akan bertanggungjawab di atas sebarang kelalaian daripada pihak tuan/puan sekiranya dokumen tuan/puan ditolak sekali lagi.

Sekian dimaklumkan, terima kasih.

Saya yang menurut perintah,

(tandatangan)

A .....

( )

Pendaftar Hakmilik Tanah/

Pentadbir Tanah Daerah

B (Emphasis added.)

(g) hence, the applicant prayed for order-in-terms of her application in encl (13);

C (h) the applicant cited the following two cases in support of her application for the first amendment:

(i) *Hock Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143; and

D (ii) *Sang Lee Co Sdn Bhd & Ors v Munusamy a/l Karuppiah (sole proprietor of MNN Consultancy Services, a firm)* [2010] 5 MLJ 285.

(i) the applicant did not cite any authority in support of her application for the second amendment.

E DECISION OF THE COURT

[11] On 21 August 2015, the court granted order-in-terms of prayer 2 of encl (13) and dismissed prayer 1 of encl (13).

F REASONS FOR THE DECISION OF THE COURT

[12] Below are the reasons why the court decided in that manner:

G **[13]** The procedure governing the amendment of judgments and orders of court is contained in O 20, r 11 of the RC 2012. Order 20, r 11 of the RC 2012 is also known as the slip rule.

[14] The rule provides as follows:

H Amendment of judgment and orders (O 20 r 11)

11 Clerical mistakes in judgment or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court by a notice of application without an appeal.

I **[15]** In *Hock Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143, the Federal Court held that the court has no power under any application in the same action to alter, vary or set aside a judgment regularly obtained after it has been entered or an order after it has been drawn up, except under the slip rule, so far as is necessary to correct errors in expressing the intention of the court,

unless it is a judgment by default or made in the absence of a party at a trial or hearing.

[16] At p 144 D–G, the Federal Court held as follows:

> Clearly the court has no power under any application in the same action to alter vary or set aside a judgment regularly obtained after it has been entered or an order after it is drawn up, except under the slip rule in Order 28 rule 11 Rules of the Supreme Court 1957 (Order 20 rule 11 Rules of the High Court 1980) so far as is necessary to correct errors in expressing the intention of the court: *Re St Nazaire Co*, *Kelsey v Doune*; *Hession v Jones*, unless it is a judgment by default or made in the absence of a party at the trial or hearing. But if a judgment or order has been obtained by fraud or where further evidence which could not possibly have been adduced at the original hearing is forthcoming, a fresh action will lie to impeach the original judgment: *Hip Foong Hong v Neotia & Co* and *Jonesco v Beard*. The hearing of the action will in a proper case be expedited: *Smith v Peizer*.

[17] In *Sang Lee Co Sdn Bhd & Ors v Munusamy a/l Karuppiah (sole proprietor of MNN Consultancy Services, a firm)* [2010] 5 MLJ 285, the court allowed the amendment sought to a regular and perfected judgment on the ground that it came within the slip rule because there was a clear difference and discrepancy between the terms of the sealed order as compared with the actual order pronounced by the learned JC1.

[18] At p 293, the court held as follows in para 8:

> ... We are of the view in the light of a clear difference and discrepancy between the terms of the sealed order as compared with the actual order pronounced by the learned JC1 on 27 June 2006, it was only right and proper that the sealed order be amended accordingly pursuant to O 20 r 11 of the RHC 1980. O 20 r 11 of the RHC 1980 provides as follows:
>
> > Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court by summons without an appeal.

[19] Reverting back to the instant case, in my considered view, the description of the applicant as the 'administrator' of the deceased's estate in the order of court dated 21 August 2011 instead of as the 'executrix' of the deceased's estate is clearly a clerical error which falls squarely within the ambit and scope of O 20, r 11 of the RC 2012. This is because based on the last will of the deceased and the grant of probate dated 14 July 2003 the applicant is clearly the executrix of the deceased's estate and not the administrator of the deceased's estate and it was the clear intention of the learned judge to grant leave to the applicant in her capacity as the 'executrix' of the deceased's estate to

transfer the flat to her and to her daughter in equal shares in accordance with the deceased's will as sought for by the applicant in her ex parte application dated 9 August 2011.

[20] Therefore, in my considered view, this court has the power under the slip rule in O 20, r 11 of the RC 2012 to grant the amendment to the regular and perfected order of court dated 21 August 2011 in the terms sought for by the applicant as it is necessary to correct an accidental error on the part of the court in expressing the intention of the court at the time it was made by the court.

[21] In *Abdul Rahim @ Packeer Mohamed bin M Esmailsha Amanah Raya Berhad v Soon Seng Company Sdn Bhd* (Kuala Lumpur High Court Civil Suit No S2–22–162–87), the defendant filed an application on 20 January 2015, vide a notice of application, encl (108) ('the application'), to amend its name in a final judgment dated 26 January 2012 ('the judgment'), from 'Soon Seng Company Sdn Bhd' to 'TYY Resources Sdn Bhd'.

[22] The facts are clearly set out in my grounds of judgment in that case and are as follows:

> BACK GROUND
>
> 3 The Judgment was delivered by the Kuala Lumpur High Court after the full trial of two suits which were consolidated together ie Kuala Lumpur High Court Civil Suit No S2–22–162–87 and Kuala Lumpur High Court Civil Suit No S1–22–956–2004 ('the two consolidated suits').
>
> 4 The defendant had previously filed an application on 21 November 2014, enclosure (101), to withdraw a sum of RM1,035,000 ('the moneys') being the balance purchase price of a house, which was deposited in the Kuala Lumpur High Court on 9 April 2004 vide an Order of Court dated 24 March 2004.
>
> GROUNDS FOR THE APPLICATION
>
> 5 In its affidavit-in-support that was affirmed by Lee Kean Binh on 19 January 2015 and filed on 20 January 2015, enclosure (109), the defendant relied on the following grounds:
>
> (1) The application which is made pursuant to Order 20, rule 11 of the Rules of Court 2012 ('the RC 2012') is necessary in order to enable the defendant to withdraw the moneys.
>
> (2) The change in the name of the defendant in the Judgment from 'Soon Seng Company Sdn Bhd' to 'TYY Resources Sdn Bhd' is necessary because the name of the defendant was changed on 23 October 2008. In the defendant's affidavit-in-support, the defendant exhibited a copy of the Form 13 that was issued by the Suruhanjaya Syarikat Malaysia ('SSM') on 6 June 2014 to support the application.

(3) During the trial of the two consolidated suits the defendant had overlooked the change in its name and the defendant did not inform the defendant's solicitors that the defendant's name had been changed from 'Soon Seng Company Sdn Bhd' to 'TYY Resources Sdn Bhd'.

(4) The moneys can only be paid out by the Kuala Lumpur High Court to the defendant in the new name of the defendant ie TYY Resources Sdn Bhd.

(5) This failure or omission by the defendant to amend the name of the defendant before the Judgment was pronounced is merely an unintentional technical error.

THE HEARING

6 On 26 May 2015 and 23 June 2015, the defendant's learned counsel informed the court that she has served the application on all the parties involved and that the plaintiff's solicitors have no objection to the application based on their letter dated 20 May 2015.

DEFENDANT'S SUBMISSION

7 The defendant submitted as follows:

(1) Under Order 20, rule 11 of the Rules of Court 2012 ('the RC 2012'), the Court can correct clerical mistakes in the judgment or orders or errors arising from any accidental slip or mistake, at any time upon a notice of application being filed, without the necessity for the applicant to file an appeal.

(2) The Court has the discretion to make the correction to the Judgment in order to do justice to the parties despite the perfection of the order because the application falls within the special exception as provided for under the slip rule, as it is merely to change the name of the defendant from Soon Seng Company Sdn Bhd to TYY Resources Sdn Bhd, which change has already been approved by the SSM and hence there is no error in the identity of the defendant.

(3) The proposed amendment to the name of the defendant in the Judgment will not adversely affect any parties herein.

(4) The application is bona fide and the costs will be borne by the defendant.

(5) There is also no objection from the plaintiff.

8 In support of its submissions, the defendant cited three cases. The three cases are *Malacca Securities Sdn Bhd v Loke Yu* [2002] 2 MLJ 506, *Hock Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143 and *Badiaddin Bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393.

[23] Nevertheless, on 23 June 2015, I dismissed the application and I held as follows:

11 The Court was of the considered view that the Court has no discretion to grant the remedy sought by the defendant in the application. This

A

is because the facts of this case do not fall within the slip rule as contained in Order 20, r 11 of the RC 2012 as there is no evidence of any accidental error on the part of the Court in naming 'Soon Seng Company Sdn Bhd' as the defendant in the Judgment.

B

12 The Judgment has correctly reflected the intention of the Court in granting judgment to the defendant as named in the intitulement of the suit filed by the plaintiff against the defendant.

C

13 There was only a failure or omission on the part of the defendant to apply to the Court before judgment was pronounced by the Court upon the conclusion of the trial to amend its name from 'Soon Seng Company Sdn Bhd' to 'TYY Resources Sdn Bhd' upon the change of its name which is reflected in the Form 13 issued by the SSM.

14 Therefore, the three cases that were cited by the defendant in support of the application are inapplicable to the facts of the present case.

D

[24] Reverting back to the instant case, it is clear that on 14 July 2003, when the grant of probate was granted to the applicant by the Kuala Lumpur High Court, the strata title was not yet in existence as it had not been issued by the land office yet.

E

[25] Hence, in my considered view, O 20 r 11 of the RC 2012 cannot be resorted to in order to confer power or discretion on the court to amend the grant of probate dated 14 July 2003 to insert the description of the strata title that was only issued by the land office on 26 February 2008 ie some four years and seven months later, because there was no accidental error on the part of the court or on the part of the applicant or on the part of the applicant's solicitors that would necessitate or require this court to correct the accidental error by amending the grant of probate dated 14 July 2003 to insert the description of the strata title for the flat.

F

G

[26] The court takes judicial notice of the well known fact that the land office is the sole authority that has all the information concerning the issue of titles and the particulars on the titles. In *Poh Yang Hong v Ng Lai Yin & Ors* [2013] 8 CLJ 964, I observed as follows in para 68 at pp 989 H to 990 B:

H

(1) *The system of land registration adopted by Parliament and codified in the NLC 1965 is based on the Torrens system of registration. The core principle of this system of registration is that the register is everything.* 'The Torrens system strives for simplicity and certitude in transfers of Torrens system land or registered land: *Oh Hiam & Ors v Tham Kong* [1980] 2 MLJ 159; [1980] 1 LNS 53 at p 164B, PC. Further, it seeks to get away from the complicated system of rules which in England regulate dealings in unregistered land, particularly those relating to such matters as notice of encumbrances and trusts: *Damodaran s/o Raman v Choe Kuan Him* [1980] AC 497 at p 502G, PC. Notwithstanding that these are Malaysian cases, the Torrens principles that were enunciated therein are of universal application throughout the

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Torrens world of registered conveyancing'. (per SY Kok in his preface in 'The Torrens System and Equitable Principles', Sweet & Maxwell Asia, Thomson Reuters, 2010).

(Emphasis added.)

[27] In *Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong* [2015] 5 MLJ 830; [2015] 6 CLJ 740, the Court of Appeal held as follows at pp 840–841 (MLJ); 747G–748B (CLJ):

... the second and third defendants are required by the National Land Code to keep and maintain a register of title of lands. *The register does not only serve the administrative function of recording who owns what to protect landowners, but also a more important economic objective of providing assurance to intending purchasers of land that it is safe to purchase land from the person whose name is on the register. Once he gets his name registered as the proprietor in the register of title, his title is indefeasible.* Without such assurance, it would be a risky act to buy property, or accept property as security, with the result demand and therefore prices would fall. *History has shown that the introduction of the land registration system had a direct correlation with economic development. The submission that the second and third defendants owed no duty to the plaintiff is therefore without merit. Authority carries with it responsibility, and authority over every citizen carries with it responsibility to every citizen affected by the actions or inactions in carrying out that responsibility.* It is the basis upon which the relationship of proximity and duty of care is founded, and liability, where the damage suffered is, as in this case, clearly foreseeable.

(Emphasis added.)

[28] Reverting back to the instant case, in my considered view, the land office can register the transfer sought for by the applicant because it has the information concerning the issue of the strata title ie PN 27007 for Lot 37206, and whether it was issued based on the original main title ie HS (D) 27714 for PT 553, and, more importantly, whether the strata title ie PN 27007 for Lot 37206, is a new title that was issued in substitution of the original main title ie HS(D) 27714 for PT 553, for that flat.

[29] Therefore, the court informed the applicant that the court has no power or discretion to grant her the application for the second amendment sought by her.

[30] Consequently, the court advised the applicant as the executrix of the deceased's estate, to re-apply to the land office for the transfer of the flat, that was left behind by the testator, to her and to her daughter, being the lawful beneficiaries of the deceased's estate in accordance with the deceased's will, in equal shares, without the necessity to obtain an order from the court to amend

the 'list of assets' in the grant of probate dated 14 July 2003 in order to insert the description of the strata title that was only issued on 26 February 2008 by the land office.

[31] The court also informed the applicant that the court will write the grounds of judgment and that the applicant is advised to obtain a copy of the court's grounds of judgment from the court and to attach them to her fresh application to the land office in order that the land office will understand the reasons why the court has dismissed her application for the second amendment sought by her and consequently, the land office will agree to register the transfer sought by her without the necessity for her to obtain an order of the court to amend the 'list of assets' in the grant of probate dated 14 July 2015 to insert the description of the strata title that was issued on 26 February 2008 by the land office for the flat.

CONCLUSION

[32] In the premises, the court allowed the applicant's application to substitute the word 'wasi' in Malay or 'executrix' in English for 'pentadbir' in Malay or 'administrator' in English in the order of court dated 25 August 2011 but dismissed her application to insert the description of the strata title for the flat in the 'list of assets' that was attached to the grant of probate dated 14 July 2003.

Application allowed in part.

Reported by Afiq Mohamad